HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 837 Hurricane Loss Mitigation Program
SPONSOR(S): Infrastructure & Tourism Appropriations Subcommittee, Insurance & Banking Subcommittee, Willhite
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	16 Y, 0 N, As CS	Fortenberry	Luczynski
2) Infrastructure & Tourism Appropriations Subcommittee	13 Y, 0 N, As CS	Hicks	Davis
3) Commerce Committee			

SUMMARY ANALYSIS

The Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in 1993, in response to problems that developed in the residential property insurance industry following a series of catastrophic events, including Hurricane Andrew in 1992. When the Internal Revenue Service granted tax-exempt status to the FHCF, it required a certain amount of FHCF funds be appropriated for hurricane mitigation purposes.

Since Fiscal Year 1997-1998 and annually thereafter, Florida law directs the Legislature to appropriate no less than $10 million and no more than 35 percent of the FHCF's investment income from the prior fiscal year for the purpose of providing funding to state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or financing upgrades; or
- Protect local infrastructure from potential hurricane damage.

In 1999, the Legislature created the Hurricane Loss Mitigation Program (HLMP). The HLMP is funded by the annual appropriation of $10 million from the FHCF. The funds are to be used as follows:

- $3 million for retrofitting public facilities for use as hurricane shelters.
- $7 million for programs to improve the wind resistance of residences and mobile homes, education concerning the Florida Building Code's cooperative programs with local governments and the Federal Government, and other efforts to prevent or reduce losses or reduce the cost of rebuilding after a disaster. These funds are further directed as follows:
    - $2.8 million to the Mobile Home Tie-Down Program (MHTDP);
    - $700,000 to the Florida International University center for hurricane research; and
    - $3.5 million to the Hurricane Loss Mitigation Program Retrofit Grant for the purpose of improving community resiliency.

The bill establishes that funds currently appropriated for the retrofitting of hurricane shelters may also be used for the construction of hurricane shelters. The bill transfers the Manufactured Housing and Mobile Home Mitigation and Enhancement Program, including the MHTDP, from Tallahassee Community College to Gulf Coast State College. This transfer includes all powers, duties, records and unspent appropriation balances of the programs. The bill saves the HLMP from repeal by extending its expiration date to June 30, 2032.

The bill maintains the annual $10 million transfer of investment income from the FHCF to DEM to support the expenditures associated with the HLMP. This bill conforms to HB 5001, the proposed House of Representatives General Appropriations Act for Fiscal Year 2022-2023. See Fiscal Analysis Section.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Legislature created the Florida Hurricane Catastrophe Fund (FHCF), a tax-exempt trust fund, in 1993.[1] The creation of the FHCF stemmed from issues that developed in the residential property insurance market following property losses due to a series of catastrophic events, including Hurricane Andrew in 1992.[2] State actions was required to correct the inability of the private insurance and reinsurance markets to maintain sufficient capacity.[3] The FHCF is intended to provide a stable and ongoing source of reimbursement to insurers for a portion of their catastrophic hurricane losses, creating additional insurance capacity for the state.[4] The FHCF is administered by the State Board of Administration, which is governed by a three-member Board of Trustees, comprised of the Governor, who serves as the chair, the Chief Financial Officer, and the Attorney General.[5]

The Internal Revenue Service issued a private letter ruling (PLR)[6] granting tax-exempt status to the FHCF, which requires a certain amount of FHCF funds to be appropriated for hurricane mitigation purposes.[7] Annually since Fiscal Year 1997-1998, Florida law directs the Legislature to appropriate no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year.[8] The FHCF appropriation is for the purpose of providing funding for state agencies, local governments, public and private educational institutions, and nonprofit organizations to support programs intended to:

- Improve hurricane preparedness;
- Reduce potential losses in the event of a hurricane;
- Provide research into means to reduce such losses;
- Assist the public in determining the appropriateness of upgrades to structures or financing upgrades; or
- Protect local infrastructure from potential hurricane damage.[9]

In 1999,[10] the Legislature created the Hurricane Loss Mitigation Program (HLMP) within the Department of Community Affairs (DCA); however, the HLMP is currently located in the Division of Emergency Management (DEM) as the DCA was dissolved.[11] The HLMP is funded by an annual $10 million of investment income transferred from the FHCF to the DEM and is appropriated for the program.

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[1] Chapter 93-409, Laws of Florida.

[2] *See* s. 215.555(1)(b), F.S.

[3] S. 215.555(1)(c), F.S.

[4] S. 215.555(1)(e), F.S.

[5] Ss. 215.555(3) and 215.44(1), F.S.

[6] A "private letter ruling," or PLR, is a written statement issued to a taxpayer that interprets and applies tax laws to the taxpayer's specific set of facts. A PLR is issued to establish with certainty the federal tax consequences of a particular transaction before the transaction is consummated or before the taxpayer's return is filed. A PLR is issued in response to a written request submitted by a taxpayer and is binding on the IRS if the taxpayer fully and accurately described the proposed transaction in the request and carries out the transaction as described. Internal Revenue Service, *Tax Exempt Bonds Private Letter Rulings: Some Basic Concepts*, https://www.irs.gov/tax-exempt-bonds/teb-private-letter-ruling-some-basic-concepts#:~:text=A%20private%20letter%20ruling%2C%20or,taxpayers%20or%20by%20IRS%20personnel. (Last visited Jan. 21, 2022).

[7] State Board of Administration of Florida, *Florida Hurricane Catastrophe Fund Fiscal Year 2008-2009 Annual Report*, p. 16, https://www.sbafla.com/fhcf/Portals/FHCF/Content/Reports/Annual/20100413_SBA_CATF_Annual_Report.pdf?ver=2016-06-08-121914-787 (last visited Feb. 26, 2021).

[8] S. 215.555(7)(c), F.S.

[9] *Id.*

[10] Chapter 99-305, Laws of Florida.

[11] S. 215.559, F.S.

Of the $10 million annually appropriated to the HLMP, $3 million is directed towards retrofitting public facilities for use as hurricane shelters. DEM must prioritize funds for projects included in the annual Shelter Retrofit Report and projects in regional planning council areas with shelter deficits.[12]

DEM's 2020 Shelter Retrofit Report indicates that significant success has been made toward reducing the deficit of safe[13] public hurricane evacuation shelter space (shelter space).[14] The combination of existing building surveys, retrofit projects, and the availability of retrofit and mitigation-related funds, as well as the application of enhanced hurricane resistance design and construction standards has increased the number of shelter spaces.[15] As of 2020, there are 1,060,767 shelter spaces.[16] Available shelter spaces were projected to increase to 1,120,174 by August 2021.[17]

The remaining $7 million of the $10 million appropriation must be used for programs that:

- Improve the wind resistance of residences and mobile homes, through loans, subsidies, grants, demonstration projects, and direct assistance;
- Educate persons concerning the Florida Building Code cooperative programs with local governments and the Federal Government; and
- Prevent or reduce losses or costs of rebuilding after a disaster.[18]

The $7 million allocated to these programs is subdivided. Forty percent ($2.8 million) is directed to the Mobile Home Tie-Down Program (MHTDP)[19], which is administered by Tallahassee Community College (TCC). The MHTDP is used to mitigate future losses for mobile homes and to provide tie-downs for mobile homes in communities throughout the state.[20]

Over the years, the MHTDP has been reviewed and audited. In 2016, the Department of Financial Services Bureau of Auditing (Bureau) audited the MHTP and determined that a contractual agreement should exist between DEM and TCC because the allocated funds are classified as "grant and aid."[21] The Bureau recommended a written agreement that incorporates the relevant statutory requirements, a clear scope of work, deliverables, monitoring, and financial consequences.[22] DEM and TCC subsequently executed a written agreement for the program that incorporated the Bureau's recommendations, including a scope of work.[23] The program's scope of work requires the mobile home tie-down improvements under this program to meet or exceed the standards established in Rules 15C-

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[12] S. 215.559(1)(b), F.S.
[13] "'Safe' is defined as meeting the intent of American Red Cross (ARC) Hurricane Evacuation Shelter Selection Standards (June 2018)." Florida Division of Emergency Management, 2020 State Retrofit Report (Nov. 2020), https://portal.floridadisaster.org/shelters/External/Current/2020%20SRR/2020%20Shelter%20Retrofit%20Report.pdf (last visited Jan. 21, 2022).
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.* As of the date of this analysis, a 2021 State Retrofit Report has not been published by the Division. Therefore, confirmation of the available increase in shelter space is currently unavailable.
[18] S. 215.559(1)(a), F.S.
[19] S. 215.555(2)(a), F.S.
[20] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2020 Annual Report* (Jan. 1, 2021), https://portal.floridadisaster.org/mitigation/HLMP/Internet%20Documents/Reports/2020%20HLMP%20Annual%20Report.pdf (last visited Jan. 21, 2022).
[21] *May 10, 2016 Letter from Department of Financial Services Bureau of Auditing to Division of Emergency Management Director Bryan Koon*, https://www.myfloridacfo.com/division/aa/Aud_Act/docs/DEM%20Report%20dtd%205-10-2016_Redacted.pdf (last visited Jan. 21, 2022).
[22] *Id.*
[23] *Id.*

1.0101 through 15C-1.0109, F.A.C.[24] However, the program is not intended to bring an existing mobile home up to building code standards.[25]

In Fiscal Year 2020-2021, nine counties (Brevard, Charlotte, Collier, Lake, Lee, Marion, Osceola, Pinellas, and Polk) benefitted from the Mobile Home Tie-Down Program. A total of 686 manufactured or mobile homes were retrofitted.[26] Currently, the program is not accepting new applications, as the waiting list exceeds five years; new applications will be accepted once the waiting list is reduced to three years.[27]

Ten percent ($700,000) of the $7 million allocated above is directed to the Florida International University (FIU) center for hurricane research.[28] During Fiscal Year 2020-2021, FIU conducted research including the following:

- Quantification of Wind Driven Rain Intrusion Through Shuttered Sliding Glass Door Systems;
- Aerodynamic Loading of Residential Buildings Subject to Experimental Downbursts and Hurricanes;
- Codification Wind-induced Loads on Irregular Shape Buildings Phase II;
- Development of Integrated Storm Tide and Freshwater Flooding Model Phase 4;
- Improving Individual Preparedness for Hurricanes; Lessons to be Learned from Longitudinal Survey Data Collected from Florida; and
- Education and Outreach Programs to Convey the Benefits of Various Hurricane Loss Mitigation Devices and Techniques.[29]

The remaining 50 percent ($3.5 million) of the $7 million allocated above is used to fund the Hurricane Loss Mitigation Program Retrofit Grant (Grant) for the purpose of improving community resiliency.[30] Funded activities include inspections, retrofits, and construction or modification of building components designed to increase a structure's ability to withstand hurricane conditions.[31]

Under this Grant, eligible applicants are nonprofit organizations, qualified for-profit organizations, and governmental entities.[32] Homeowners are not eligible, but may partner with an eligible local government.[33] In Fiscal Year 2020-2021, 13 recipients received the grant to conduct wind mitigation retrofits to homes. These recipients included:

- Calhoun County;
- Carrabelle;
- Centro Campesino;
- City of Bradenton;
- City of Deerfield Beach;
- City of Lauderdale Lakes;
- Franklin County;
- Gulf County;
- Memorial Health;
- Miami Dade Community Action & Human Services Department;
- North Lauderdale;

[24] Department of Financial Services, *Original Contract - D9042 (executed Aug. 7, 2018)*, https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=310000&ContractId=D9042 (last visited Jan. 21, 2022).
[25] Tallahassee Community College, Mobile Home Tie-Down Program, https://www.tcc.fl.edu/about/college/administrative-services/sponsored-programs/mobile-home-tie-down-program/ (last visited Jan. 21, 2022).
[26] Florida Division of Emergency Management, *Florida Hurricane Loss Mitigation Program 2021 Annual Report* (Jan. 1, 2022). According to TCC, the number of mobile homes completed during the 2020-2021 fiscal year was significantly impacted by COVID-19.
[27] Tallahassee Community College, *supra* note 25.
[28] S. 215.559(3), F.S.
[29] Florida Division of Emergency Management, *supra* note 26.
[30] Florida Division of Emergency Management, *Hurricane Loss Mitigation Program*, https://www.floridadisaster.org/dem/mitigation/hurricane-loss-mitigation-program/ (last visited Jan. 21, 2022).
[31] *Id.*
[32] *Id.*
[33] *Id.*

- Pompano Beach; and
- St. Lucie Habitat for Humanity.[34]

Seven additional projects were funded that did not involve residential wind retrofitting, including the following: Banyan Health, City of Edgewater, City of Flagler Beach, City of Panama City, DeSoto County Board of County Commissioners, and West Palm Beach Housing Authority.[35]

Current law requires DEM, with the exception of the hurricane research program conducted by FIU, to develop these programs in consultation with an advisory council (Council).[36] The Council also reviews and approves FIU's hurricane research work plan.[37] The Council must consist of one representative designated by each of the following:

- Chief Financial Officer;
- Florida Homebuilders Association;
- Florida Insurance Council;
- Federation of Manufactured Home Owners;
- Florida Association of Counties; and
- Florida Manufactured Housing Association.[38]

DEM is required to submit a full report and evaluation of these activities on January 1st each year.[39] The report must be submitted to the Speaker of the House of Representatives, the President of the Senate, and the Majority and Minority Leaders of the House of Representatives and the Senate.[40] The Office of Insurance Regulation (OIR) must review the report and make recommendations to the insurance industry as deemed appropriate by the OIR.[41] The recommendations may be used by insurers for potential discounts or rebates.[42]

Below are the Hurricane Loss Mitigation Program Activities for Fiscal Year 2020-2021:

Hurricane Loss Mitigation Program Activities for Fiscal Year 2020-2021[43]	
Shelter Retrofit Program	$3,000,000
HLMP Retrofit Grant	$3,500,000
Manufactured Homes	$2,800,000
Hurricane Mitigation Research	$700,000
TOTAL	**$10,000,000**

The statute that creates the HLMP, also created the Manufactured Housing and Mobile Home Mitigation and Enhancement Program (MHMHMEP) to mitigate or enhance manufactured and mobile homes in specified areas of the state.[44] However, the MHMHMEP does not share in the $10 million appropriated from the FHCF and is not currently funded. The MHMHMEP also references an obsolete rate standard for mobile home insurance policies issued by Citizens Property Insurance Corporation.[45]

Section 215.559, F.S., relating to the HLMP is scheduled to be repealed on June 30, 2022.[46]

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[34] Florida Division of Emergency Management, *supra* note 26.
[35] *Id.*
[36] S. 215.559(4), F.S.
[37] S. 215.559(3), F.S.
[38] S. 215.559(4), F.S.
[39] S. 215.559(6), F.S.
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] Florida Division of Emergency Management, *supra* note 26.
[44] S. 215.559(2)(b), F.S.
[45] S. 215.559(2)(b)3., F.S.
[46] S. 215.559(7), F.S.

Effect of the Bill

The bill establishes that the funds currently appropriated for the retrofitting of hurricane shelters may also be used for the construction of hurricane shelters. The bill transfers the MHMHMEP, including the MHTDP, from Tallahassee Community College to Gulf Coast State College. Effective July 1, 2022, all powers, duties, functions, records, property, pending issues and unspent appropriations balances of the programs are transferred from Tallahassee Community College to Gulf Coast State College.

The bill saves the HLMP from repeal by extending the expiration date of the relevant statute to June 30, 2032.

In relation to the mobile home program, the bill also removes obsolete rate standard language regarding mobile home insurance policies issued by Citizens.

B. SECTION DIRECTORY:

Section 1. Amends s. 215.559, F.S., related to Hurricane Loss Mitigation Program.

Section 2. Provides for the transfer of powers, records and unspent funding to Gulf Coast State College.

Section 3. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Annually, $10 million of investment income is transferred from the FHCF to DEM and is appropriated for the HLMP. This recurring appropriation would continue to be available for the program until June 30, 2032, and conforms to HB 5001, the proposed House of Representatives General Appropriations Act for Fiscal Year 2022-2023.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that research and program activities conducted through the HLMP strengthen structures, educate the public, and reduce property losses, the private sector will benefit. However, the impact is indeterminate.

D. FISCAL COMMENTS:

Current law specifies that the Legislature must appropriate no less than $10 million, but not more than 35 percent, from the investment income of the FHCF from the prior fiscal year for hurricane mitigation effort. Pursuant to the PLR, failure to spend FHCF funds on hurricane loss mitigation efforts could jeopardize the tax-exempt status of the FHCF.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 2, 2022, the Insurance & Banking Subcommittee considered the bill, adopted a strike all amendment, and reported the bill favorably as a committee substitute. The amendment made the following modifications to the bill:

- Established that the funds currently appropriated for the retrofitting of hurricane shelters may also be used for the construction of hurricane shelters.
- Transferred the Manufactured House and Mobile Home Mitigation and Enhancement Program, which includes the Mobile Home Tie-Down Program, from Tallahassee Community College to Gulf Coast State College.

On February 16, 2022, the Infrastructure & Tourism Appropriations Subcommittee considered the bill, adopted an amendment with an adhering amendment, and reported the bill favorably as a committee substitute. The amendments provided for the transfer of all powers, duties, functions, records, property, pending issues and unspent appropriations balances of the programs from Tallahassee Community College to Gulf Coast State College. The amendment further changed the bill's effective date to July 1, 2022.

The analysis is drafted to the committee substitute as passed by the Infrastructure & Tourism Appropriations Subcommittee.